



7020-02

## **INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 337-TA-1084]**

### **Certain Insulated Beverage Containers, Components, Labels, and Packaging Materials Thereof**

#### **Commission's Determination Not to Review an Initial Determination Finding Two Respondents in Default and Terminating the Investigation with Respect to Three Respondents; Request for Written Submissions on Remedy, the Public Interest, and Bonding**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 29) finding two respondents in default and terminating the investigation with respect to the three remaining respondents. The Commission requests written submissions, under the schedule set forth below, on remedy, public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Robert Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the

Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on November 24, 2017, based on a complaint and supplement, filed on behalf of YETI Coolers, LLC of Austin, Texas ("Yeti"). 82 FR 55860-61 (Nov. 24, 2017). The amended complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain insulated beverage containers, components, labels, and packaging materials thereof by reason of infringement of U.S. Trademark Registration Nos. 5,233,441 and 4,883,074; U.S. Copyright Registration Nos. VA 1-974-722, VA 1-974-732, VA 1-974-735; and U.S. Design Patent Nos. D752,397, D780,533, D781,146, and D784,775. The complaint further alleges that an industry in the United States exists as required by section 337. The Notice of Investigation named as respondents, *inter alia*, Huizhou Dashu Trading Co., Ltd. of Huizhou City, China ("Huizhou Dashu Trading"); Huagong Trading Co., Ltd. of Wangshizhuang, China ("Huagong Trading"); Tan Er Pa Technology Co., Ltd. of Hong Kong, China ("Tan Er Pa"); Shenzhen Great Electronic Technology Co., Ltd. of Shenzhen, China ("Great Electronic"); and SZ Flowerfairly Ltd. of Shenzhen, China ("Flowerfairly"), which are the only five respondents remaining in this investigation. The Office of Unfair Import Investigations ("OUII") was also named as a party.

The Commission served the complaint and notice of investigation on Huizhou Dashu Trading and Huagong Trading. Neither party responded to the complaint, the notice of investigation, or discovery requests. On July 20, 2018, Yeti moved for an order for Huizhou

Dashu Trading and Huagong Trading to show cause why they should not be found in default. On August 1, 2018, the ALJ ordered Huizhou Dashu Trading and Huagong Trading to show cause why they should not be held in default within 14 days. Order No. 28.

Neither Huizhou Dashu Trading nor Huagong Trading responded to the ALJ's order. On September 14, 2018, Yeti moved for an order finding Huizhou Dashu Trading and Huagong Trading in default for their failure to respond. Yeti also moved to terminate the investigation with respect to Tan Er Pa, Great Electronic, and Flowerfairy based on a withdrawal of the complaint because those respondents were not served with the complaint and notice of investigation. Yeti stated in its motion that it is not seeking a general exclusion order. On September 26, 2018, OUII supported the motion.

On September 27, 2018, the ALJ issued the subject ID, finding Huizhou Dashu Trading and Huagong Trading in default, and terminating Tan Er Pa, Great Electronic, and Flowerfairy from the investigation based on a voluntary withdrawal of the complaint. No petitions for review were filed.

The Commission has determined not to review the subject ID.

Section 337(g)(1) and Commission Rule 210.16(c) authorize the Commission to order relief against a respondent found in default, unless, after considering the public interest, it finds that such relief should not issue.

In connection with the final disposition of this investigation, the Commission may: (1) issue an order that could result in the exclusion of articles manufactured or imported by the defaulting respondents; and/or (2) issue cease and desist orders that could result in the defaulting respondents being required to cease and desist from engaging in unfair acts in the importation

and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainants seek a cease and desist order against a defaulting respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainants also rely on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.
2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors that the Commission will consider include the effect

that the exclusion order and/or cease and desists orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 Fed. Reg. 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**WRITTEN SUBMISSIONS:** Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Yeti and OUII are requested to submit proposed remedial orders for the Commission's consideration. Yeti is also requested to state the HTSUS numbers under which the accused products are imported, and to state the dates that the patents expire. Yeti is further requested to supply identification information on any known importers.

Written submissions and proposed remedial orders must be filed no later than the close of business on November 5, 2018. Reply submissions must be filed no later than the close of business on November 12, 2018. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit eight true paper copies to the Office of the Secretary pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1084") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, [https://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel<sup>1</sup>, solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on [EDIS](#).

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<sup>1</sup> All contract personnel will sign appropriate nondisclosure agreements.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 22, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

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